Canada

Registered Charities Newsletter

No. 26 - Winter 2006

- From the Director General
- Legalese for charities – Part II
- What's new?
  - Charities Partnership and Outreach Program
  - New on-line search feature
- Did you know?
  - Books and records
- Court news
  - Books and records in the courts
- Contact information
  - Email your comments or suggestions:
- Table: Type of record and length of retention

From the Director General

It has been just over a year since a tsunami devastated large parts of coastal areas that border the Indian Ocean. Information on Canada's response to the tsunami is available at the Web site of the **Canadian International Development Agency**. Part of the Government of Canada's response to the disaster was to put in place special measures for donations made from January 1 to January 11, 2005, to eligible registered charities involved in tsunami relief efforts. These measures meant that such donations were considered as having been made during the 2004 taxation year. The generosity of Canadians who took advantage of these measures is reflected in the significant increase in the amount that was given to charity.

The amount of donations claimed for the 2004 tax year increased to more than $6.9 billion in donations, the highest amount ever donated in a single tax year. The total was 6.3% higher than in 2003. Almost 5.8 million taxfilers made a donation, a 3.5% increase over the previous year. The median donation by the tax filers increased to $230, up from $220 in 2003 [Footnote 1].

Many charities have undertaken activities in the areas affected by the tsunami. *Registered Charities Newsletter* No. 20 discusses some of the particular concerns for charities that have been involved in work outside Canada. These include concerns relating to the books and records that charities need to keep. Although some of the questions that we have received are specific to charities working outside Canada, maintaining adequate books and records is a requirement for all charities. In this issue, we are pleased to respond to questions about the books and records requirements for charities.

Developing these questions on books and records is part of a larger objective to make more basic, easily accessible information available to charities. We are also continuing our information on "legalese for charities".

Over the next year we plan to focus our efforts on improving charitable sector education. One way in which we plan to achieve this is through the implementation of the new Charities Partnership and

Outreach Program, which was first mentioned in ***Registered Charities Newsletter* No. 23**. This program provides contribution funding to registered charities and non-profit organizations for the development and delivery of compliance-related education and training projects for charities. This newsletter includes a link to additional information on the program.

We will also be placing a renewed emphasis on our Web site. This newsletter includes a piece on one of the first steps in this initiative, a new on-line search feature that is available on our Web site. We are also re-examining what we will display and how it will be organized for easy access. With this in mind, we would welcome your ideas about what additional information needs to be developed and how the information can be displayed so as to make it as accessible as possible. If you have suggestions on how we can improve our Web site please e-mail us at **Charities-Bienfaisance@ccra-adrc.gc.ca**.

Legalese for charities – Part II

Summary: Within the Income Tax Act, *terms sometimes have more specific meanings than in common usage. In this instalment of Legalese for charities, we discuss the following terms: prescribed, deemed, shall, and may.*

You can read our earlier piece on Legalese for charities in ***Registered Charities Newsletter* No. 22.**

"prescribed"

The term **"prescribed"** refers to the content or use of a form or process having been authorized.

Subsection 248(1) gives the following meanings for **prescribed**:

> *(a)* in the case of a form, the information to be given on a form or the manner of filing a form, authorized by the Minister;
>
> *(a.1)* in the case of the manner of making or filing an election, authorized by the Minister; and
>
> *(b)* in any other case, **prescribed** by regulation or determined in accordance with rules **prescribed** by regulation;

e.g. 149.1(14) Information returns. Every registered charity shall, within 6 months from the end of each taxation year of the charity, file with the Minister both an information return and a public information return for the year, each in ***prescribed*** *form and containing* ***prescribed*** *information, without notice or demand therefor.*

"deemed"

"**Deem**" means to consider, regardless of other facts.

For example, under proposed legislative amendments:

248 (35) Deemed fair market value. For the purposes of subsection (31), paragraph 69(1)(b) and subsections 110.1(2.1) and (3) and 118.1(5.4) and (6), the fair market value of a property that is the subject of a gift made by a taxpayer to a qualified donee is ***deemed*** *to be the lesser of the fair market value of the property otherwise determined and the cost, or in the case of capital property, the adjusted cost base, of the property to the taxpayer immediately before the gift is made if*

> *(a) the taxpayer acquired the property under a gifting arrangement that is a tax shelter as defined*

in subsection 237.1(1) ; or

(b) except where the gift is made as a consequence of the taxpayer's death,

(i) the taxpayer acquired the property less than 3 years before the day that the gift is made, or

(ii) the taxpayer acquired the property less than 10 years before the day that the gift is made and it is reasonable to conclude that, at the time the taxpayer acquired the property, one of the main reasons for the acquisition was to make a gift of the property to a qualified donee.

"shall"

When the word **"shall"** is used in a legal context, it generally imposes a duty or compulsory obligation. It means "must."

*e.g. 189(6.1) Revoked charity to file returns. Every taxpayer who is liable to pay tax under subsection 188(1.1) for a taxation year **shall**, on or before the day that is one year from the end of the taxation year, and without notice or demand,*

(a) file with the Minister

(i) a return for the taxation year, in prescribed form and containing prescribed information, and

(ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and

(b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188 (1.1) for the taxation year.

"may"

By contrast, **"may"** suggests an optional course of action. It allows for choice. In contrast to "shall," which is to be construed as imperative, "may" is to be construed as permissive. [Footnote 2] It is generally found in deduction provisions - "may be deducted". For example, a taxpayer is entitled to a credit for receipted charitable donations under subsection 118.1(3), but is not required to claim them. The use of the word "may" in the *Income Tax Act*, in relation to the actions of the Minister, makes Ministerial discretion possible.

e.g. *149.1(13) Designation of private foundation as public. On application made to the Minister by a private foundation, the Minister **may**, on such terms and conditions as the Minister considers appropriate, designate the foundation to be a public foundation, and on and after the date specified in such a designation, the foundation to which it relates shall, until such time, if any, as the Minister revokes the designation, be deemed to be a public foundation.*

What's new

Charities Partnership and Outreach Program

As announced in ***Registered Charities Newsletter* No. 23**, the CRA launched the Charities Partnership and Outreach Program in 2005. Under the program, contribution funding is provided to

registered charities and non-profit organizations to develop and deliver compliance-related education and training projects for charities.

The deadline for applications under the Program's first call for proposals was July 15, 2005. All applications for funding that have been received have been reviewed and an announcement on funding is expected shortly. To find out which projects have been funded, and to get more information about the Charities Partnership and Outreach Program, please visit our Web site at: **www.cra.gc.ca/tax/charities/funding/menu-e.html.**

New on-line search feature

As of December 2005, the Charities Directorate has completed the first part of a two-phase project to enhance its Web site: a series of improvements to the online listing of registered charities. Internet visitors will now notice several changes to the Charities Directorate's Web site.

The site now displays the following four listings:

- Canadian registered charities
- Newly registered charities
- Recently revoked charities
- Recent annulments

Enhancements to the online search feature will now allow Internet visitors to perform a search in the Charity Name field using multiple keywords for all of the above charities listings. This is similar to search engines available on the Internet. For example, when searching for a specific charity name ("The Red Charity of Canada"), you can enter one or more words in the name. If you enter "Charity Canada Red", the system will search for all the identified keywords regardless of the sequence.

A common search criteria screen will be added to enable Internet visitors to search the charities listings by selecting from a drop-down menu. There will also be a dynamic download feature, which means that Internet visitors will be able to download specific data to their workstations, rather than having to download the entire charities listing.

In our continuing effort to make the site more useful, these listings will be updated on a daily basis to ensure that Internet visitors have access to current data.

You can look forward to additional improvement in Spring/Summer 2006, when further enhancements to the Charities Web site are implemented.

Did you know?

Books and records

Summary: A registered charity must keep adequate books and records at a Canadian address it has on file with us, so that we can verify official donation receipts issued, as well as its revenue and expenditures. It must also include information that will enable the Minister to determine if there are any grounds for revocation. A charity must also keep source documents that support the information in the records and books of account.

Q1. On what basis can the CRA require that every registered charity and registered Canadian amateur athletic association keep records and books of its accounts?

A1. The requirement for the proper maintenance of books and records is specified in subsection 230

(2) of the *Income Tax Act*, which reads:

Every registered charity and registered Canadian amateur athletic association shall keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister containing

(a) information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act;

(b) a duplicate of each receipt containing prescribed information for a donation received by it; and

(c) other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under this Act.

Q2. Where can I find information on the retention and destruction of books and records?

A2. IC78-10, *Books and Records Retention / Destruction*, deals with the retention and destruction of a charity's books and records. Within the *Income Tax Act*, this is covered under subsection 230(4) to (8) and Regulation 5800.

Q3. How long must we keep books and records (retention period)?

A3. Books and records must be retained for period(s) as provided in subsections 230(4) to (7) of the Act and *Regulation* 5800, or until the Minister gives written permission for their earlier disposal under subsection 230(8).

The length of time varies by the type of record. A table that outlines the length of retention for different types of records is available at: **Table: Type of record and length of retention**.

Q4. Do church offering envelopes need to be retained?

A4. Yes. When the envelopes help verify donations, the retention period for church offering envelopes is two years following the end of the fiscal period for which they were issued, **unless** the individual donations are recorded from the envelopes directly into a ledger of some type. (See CIL - 2001 - 021, available on the CRA Web site at: **www.cra.gc.ca/tax/charities/policy/cil/2001/cil-021-e.html**)

Q5. Does the six-year retention period mean that we can destroy all of our financial information every six years?

A5. No. The six-year retention requirement does not mean that a charity can destroy its records every six years. It means that a charity can destroy this information only after six years from the end of the taxation year to which the records relate.

Q6. What rules apply to electronic records?

A6. Electronic records are subject to the same rules as paper records. Under subsection 230 (4.1) of the *Income Tax Act*, these records must be retained in an electronically readable format for the same retention period as that required for paper records.

IC05-1, *Electronic Record-Keeping*, provides information and guidance for persons who use electronic business systems and who are required by law to keep books and records in Canada according to section 230 of the *Income Tax Act*. A copy of this information circular is available on the CRA Web site at **www.cra.gc.ca/E/pub/tp/ic05-1/README.html**.

Q7. Where does the CRA require your registered charity to keep books and records?

A7. A registered charity's books and records must be kept at a Canadian address it has on file with the CRA. This includes all books and records related to any activity carried on outside Canada. The charity's books and records cannot be kept at a foreign address.

More information for charities that operate outside Canada, including information on maintaining books and records, is available in *Registered Charities Newsletter No. 20*.

Q8. Does a charity need to keep more than one copy of its books and records?

A8. No, but it may be prudent to do so.

In the event of a fire or other disaster that destroys the charity's books and records, it may be useful to have a second set. We have helped some charities re-establish themselves after such a disaster by giving them copies of documents we hold in our files. However, this can only partly replace what may be lost.

It may, therefore, be prudent to keep duplicates of key documents in a separate location. Storing data electronically can also increase the chances of retrieving information, as long as a regular back-up system is in place, and the back-ups are kept in a safe place (see Questions 11 and 12).

Q9. What do we mean by "adequate books and records"?

A9. As a general rule, the CRA does not specify the records to be kept. However, in accordance with subsection 230(3), the Minister may specify what records or books of account shall be kept when a person has failed to keep adequate records and books of account.

Your charity must keep adequate books and records (located at a Canadian address we have on file) so that we can verify official donation receipts issued, as well as income received and expenses made.

Also, the *Income Tax Act* requires charities to keep information in addition to their books and records so that we can determine whether their activities continue to be charitable. This additional information will vary from charity to charity but should include, for example, copies of minutes of meetings, correspondence, publicity brochures or advertisements, and details of charitable program activities including program reports.

Q10. What happens if a charity's records are inadequate?

A10. Under subsection 230(3) of the Act, "... the Minister may require the person to keep such records and books of account as the Minister may specify and that person shall thereafter keep records and books of account as so required." If a charity's records are inadequate, the Minister may:

- issue a requirement that adequate records be provided;
- suspend the charity's tax-receipting privileges; and/or,
- revoke charities that have not provided adequate records.

Suspension is a new sanction. Under new subsection 188.2(2), a charity may have its tax-receipting privileges suspended for a year if it contravenes any of sections 230 to 231.5 of the *Income Tax Act*, which include providing information as required. While we expect generally to use education and compliance agreements first, we anticipate instances where records are deliberately not compiled or are altered, destroyed or hidden, or in order to disguise a serious infraction. In such cases, we will

move directly to an intermediate sanction or even revocation of the charity's registration.

Q11. Our last treasurer has our books and records for the last fiscal period and refuses to pass them over. As a result, we cannot obtain the necessary information to file our T3010A. What should we do?

A11. The charity remains responsible for maintaining adequate books and records and for meeting its filing requirements. It may wish to consider any legal means to obtain the documentation from the last treasurer. In such a case, the charity may want to keep the CRA informed of the steps it is taking.

Q12. Our computer crashed and it appears that all our records may have been lost. What should we do?

A12. The charity remains responsible for maintaining adequate books and records. As described in question 6, electronic records must be retained in an electronically readable format.

The charity may be able to retrieve its records through the use of a computer specialist. If available, the charity may also be able to use its back-up files. It may also be able to reconstruct the files from the hard copies of documents retained by it.

Q13. Should a charity keep its books and records in one of Canada's official languages even if it serves a population with another mother tongue?

A13. Yes. We ask that these be kept in English or French. Books and records can be translated from the original, if these have been created in a language other than English or French. However, we recognize that for some small charities this may become a significant burden. We are willing to consider such situations on a case-by-case basis.

Charities should be aware that under subsection 286(1) of the *Excise Tax Act*, persons, including charities, who carry on a business or are engaged in a commercial activity in Canada, who are required to file a GST/HST return, or persons who make an application for a rebate or refund, must keep adequate books and records in English or French in Canada. (See **www.cra.gc.ca/E/pub/gm/15-1/15-1-e.html**)

NOTE: Information specific to registered charities that operate outside Canada is available in the ***Registered Charities Newsletter* No. 20.**

Court news

Books and records in the courts

Several cases have helped to mould and confirm the CRA's policy on books and records. These include:

- *Canadian Committee for the Tel Aviv Foundation v. Canada* (2002 FCA 72)
- *College rabbinique de Montreal Oir Hachaim D'Tash v. Canada (Minister of the Customs and Revenue Agency)* (2004 FCA 101)
- *The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada* (2004 FCA 397)

These cases have been covered in previous newsletters [Footnote 3], but in this newsletter we will focus on aspects relating to books and records. By looking at these decisions it is possible to gain a better understanding of a charity's responsibility to maintain adequate books and records.

As part of its appeal, the ***Canadian Committee for the Tel Aviv Foundation*** argued that the CCRA [Footnote 4] violated the charity's rights to procedural fairness and a fair hearing by not providing the charity with copies of the audit reports and working papers on which it had based its conclusions, and by not considering a written report the charity made available after the last audit was completed. The charity argued that the burden of proof for establishing the facts justifying revocation should be on the CCRA, not on the registered charity.

However, the Court found that the responsibility to prove the facts in a revocation case lies with the registered charity. This is because in cases involving tax, it is the taxpayer, such as a registered charity, who is in a better position to provide facts that would show that the regulator's assessment is incorrect. Therefore, it is the responsibility of the registered charity "to prove that its charitable organization status should not be revoked." The Court did not agree with the organization's argument that its appeal should be allowed based on a lack of notice of the need to keep proper books and records at its Canadian address, and to make them available at the time of the audit. In its decision, the Court stated:

> "Clearly, the Committee had adequate notice of the need to maintain records on its premises with regards to the activities being carried out on its behalf by the agent. The Committee should have had the documentation readily available at the time of the 1997 Audit. Providing the written report subsequent to the 1997 Audit was insufficient. From the Minister's perspective, it was the Committee's failure to have the report available at the time of the Audit, not the contents of the report, which was important. The Committee, in failing to have the report readily available, had again breached the Agency Agreement by which it had undertaken to abide."

Based on this, it was not procedurally unfair for the CCRA to refuse to consider the written report the charity submitted after the CCRA audit had been completed.

In ***College Rabbinique de Montreal Oir Hachaim D'Tash***, the decision to revoke was upheld by the Court, which stated:

> "Even though the appellant was not given an opportunity to respond to some of the grounds put forward by the Minister in his Notice of Intention to Revoke dated March 3, 2000, we are nonetheless satisfied that there were sufficient grounds to support the Minister's decision, in respect of which the appellant was given full opportunity to put its case forward, namely that it had provided official donation receipts for amounts that were not "gifts" within the meaning of subsection 118.1(1) of the *Income Tax Act*, that its resources were not all devoted to charitable purposes and activities, its failure to maintain proper records and books in accordance with subsection 230(2) of the *Income Tax Act*, that it made loans to non qualified donees and that it made loans which were not considered to be operating at arm's length."

The Minister's decision was based on several grounds, including inadequate books and records, **each** of which indicated non-compliance with the requirements of the Act and Regulations.

Similar reasoning was used in the case of **The Lord's Evangelical Church of Deliverance and Prayer of Toronto**. One of the reasons for the revocation of the church was concern with the adequacy of its books and records. In its response to the CRA's concerns about their adequacy, the church's solicitors stated that as the appellant was a small organization it could not afford the services of a professional bookkeeper and that the church's accountant would assist the volunteers "as far as possible to correct their previous mistakes." The church failed to make the changes necessary to maintain adequate books and records or address the CRA's other concerns in a satisfactory manner.

In its decision, the Court noted that subsection 230(2) of the Act requires every registered charity to "keep records and books of account" so as to enable the Minister "to determine whether there are any grounds for revocation" of a registration and to allow verification of donations that are eligible for deduction or tax credit under the Act.

"As we have seen, the adequacy of the appellant's books and records, the listing of 2001 charitable donations and the failure to respond to queries respecting personal benefits conferred by the appellant on various members were repeated in the Charities Directorate's message of March 31, 2003. Even acknowledging the relatively small size of the appellant's operations and its need to rely heavily on volunteers for proper books and record keeping, the evidence does not show that these concerns of the Minister were met in any meaningful way."

Based on these court cases, we know that:

- the responsibility to prove the facts in a revocation case lies with the registered charity;
- charities must make books and records available to the CRA at the time of an audit;
- failure to maintain proper records and books in accordance with subsection 230(2) of the *Income Tax Act* is itself sufficient reason to revoke an organization's charitable status; and
- even small organizations that depend on volunteers are responsible for ensuring that their books and records are maintained in a meaningful way.

In general, when the CRA becomes aware that a charity's books and records are inadequate, it will make the charity aware of the problems and provide the charity with the opportunity to address the CRA's concerns. However, a single significant failure or repeat failures can lead to a one-year suspension of receipting privileges or revocation.

Contact information

You can call the Charities Directorate toll free at:
1-800-267-2384 (for service in English)
1-888-892-5667 (bilingual)

You can also write to us at:

Charities Directorate
Canada Revenue Agency
Tower A
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Ottawa ON K1A 0L5

Email your comments or suggestions:

- about this newsletter to:
  charities-bienfaisance-bulletin@ccra-adrc.gc.ca

- about our draft publications to:
  consultation-policy-politique@ccra-adrc.gc.ca

- about our Roadshow to:
  information.sessions@ccra-adrc.gc.ca

- about our Web site to:
  charities-bienfaisance@ccra-adrc.gc.ca

You can contact the Charities Representative about service provided by the Charities Directorate toll free at 1-866-303-0316 or 948-8608 in the greater Ottawa area, or by email at: **charities-bienfaisance-resource@ccra-adrc.gc.ca**

You can find all our publications at:

www.cra.gc.ca/tax/charities/formspubs/menu-e.html

Draft publications for consultation are available at: **www.cra.gc.ca/tax/charities/consultations/menu-e.html** For information on new additions about charities, see the "What's new" page at: **www.cra.gc.ca/tax/charities/whatsnew/menu-e.html**

For an email notification of these additions, subscribe to the free electronic mailing list at: **www.cra-arc.gc.ca/eservices/maillist/subscribecharities-e.html.**

Footnotes

[Footnote 1]

[Footnote 1] In other words, among those Canadian tax filers reporting charitable donations, half gave more than $230 and half gave less. More information on the donation patterns of taxfilers can be found in ***The Daily***, a publication of Statistics Canada.

The Statistics Canada numbers are based on taxfiler information. They do not include the many Canadians that make gifts to charities but do not claim a donation amount on their tax return. Also, there was a significant fundraising effort through schools, religious organizations and other institutions that is not included in these numbers.

As well, it is possible to carry donations forward for up to five years after the year in which they were made. Therefore, donations claimed for the 2004 taxation year could include donations that were made in any of the five previous years. Another factor is that, tax filers can claim both their own donations and those of their spouses or common law partner. Consequently, the number of persons who made charitable donations may be higher than the number who claimed tax credits.

[Footnote 2]

From section 11 of the *Interpretation Act*, R.S.C. 1985.

[Footnote 3]

The original newsletter articles on these cases can be found in newsletters No. 13, 19 and 23 respectively. These **Newsletters** are available on-line. Copies of all these decisions are available at **DECISIONS OF FEDERAL COURT.**

[Footnote 4]

With the creation of the Canada Border Services Agency, the customs function of the Canada Customs and Revenue Agency (CCRA) was removed. As a result of this change, the revenue agency is now referred to as the Canada Revenue Agency (CRA).

Last update: December 2005.

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